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**FILED**

JUL 30 2007

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID GASTON WILKES,

Plaintiff,

v.

WALGREEN'S STORE, et al.,

Defendants.

No. C 07-2010 MJJ (PR)

**ORDER OF DISMISSAL**

Plaintiff, an inmate in Martinez, California, filed this pro se civil rights complaint pursuant to 42 U.S.C. § 1983.

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

Plaintiff alleges a security guard and store manager at a Walgreen's store in Richmond, California, assaulted him. As described above, to state a cognizable claim under § 1983, the defendants must be "state actors," meaning they were acting under color

United States District Court  
For the Northern District of California

1 of state law. See id. Private citizens, such as employees of a private company such as  
2 Walgreen's, as well as Walgreen's itself, are not "state actors" under § 1983. See Gomez  
3 v. Toledo, 446 U.S. 635, 640 (1980). Consequently, plaintiff's claims against the  
4 Walgreen's guard, manager and Walgreen's itself, while perhaps cognizable in state court  
5 under state law tort theories, are not cognizable under § 1983. Accordingly, plaintiff's  
6 claims against these defendants are DISMISSED without prejudice to plaintiff raising  
7 them

8 Plaintiff also alleges that members of the Richmond Police Department failed to  
9 follow-up and log plaintiff's citizens complaints against the Walgreen's store employees,  
10 allowed a store surveillance tape of the incident to be destroyed, and placed false  
11 information in a police report. Plaintiff does not cite any authority, and this Court is  
12 aware of none, indicating that such actions violate his constitutional rights or any other  
13 provision of federal law. Consequently, plaintiff has failed to state a cognizable claim for  
14 relief against members of the Richmond Police Department.

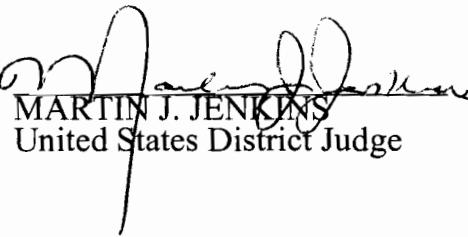
15 For the foregoing reasons, this action is DISMISSED for failure to state a claim  
16 upon which relief may be granted under § 1983. This dismissal is without prejudice to  
17 plaintiff raising in state court any cognizable state law claims based on the incidents that  
18 are the subject of the instant action. In light of this dismissal, the applications for leave to  
19 proceed in forma pauperis are DENIED and no fee is due.

20 This order terminates Docket No. 2.

21 The Clerk shall close the file.

22 IT IS SO ORDERED.

23 DATED: 7/26/2007

  
24 MARTIN J. JENKINS  
25 United States District Judge  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DAVID GASTON WILKES,

Plaintiff,

v.

RICHMOND POLICE DEPT et al,

Defendant.

Case Number: CV07-02010 MJJ

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 30, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David Gaston Wilkes  
Prisoner Id 2006018484  
901 Court Street  
Martinez, CA 94553



Dated: July 30, 2007

Richard W. Wicking, Clerk  
By: Edward Butler, Deputy Clerk